334.

SUPREME COURT OF THE UNITED STATES.

No. 72.

HUGH A. GARLAND, PLAINTIFF IN ERROR,

vs.

GEO. M. DAVIS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, wherein George M. Davis is plaintiff and Hugh A. Garland is defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday in January next in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued the 18th day of February, 1843.

W. BRENT, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to George M. Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, sitting for the county of Washington, wherein Hugh A. Garland is plaintiff in error and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said Hugh A. Garland in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this 18th day of February, 1843.

W. CRANCH.

Know all men by these presents that we, Hugh A. Garland, George C. Patterson, and E. Kingman, are held and firmly bound unto George M. Davis in the full and just sum of three hundred dollars, current money of the United States, to be paid to the said

George M. Davis, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 16th day of February, one thousand eight hundred and forty-three.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said George M. Davis was plaintiff and the said Hugh A. Garland was defendant, judgment was rendered against the said defendant; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said George M. Davis, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next.

Now, the condition of the above obligation is such, that if the said Hugh A. Garland shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

E. KINGMAN, [SEAL.]
HUGH A. GARLAND, [SEAL.]
By E. KINGMAN,
GEO. C. PATTERSON.]SEAL.]

Signed, sealed, and delivered, in the presence of—
W. L. BRENT,
GEO. C. PATTERSON.

Approved: W. CRANCH.
Copy test: W. BRENT, *Clk.*

Style of court.

DISTRICT OF COLUMBIA, *sct:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

Present: The honorable William Cranch, Buckner Thruston and James S. Morsell, asst. judges; Alexander Hunter, esq., marshal; William Brent, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

GEORGE M. DAVIS,
vs.
HUGH A. GARLAND.

Be it remembered, that heretofore, to wit, on the eleventh day of

September, in the year of our Lord one thousand eight hundred and thirty-nine, the said George M. Davis, by Henry M. Morfit, esquire, his attorney, prosecuted and sued forth, out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Capias ad respondendum.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you take Hugh A. Garland, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid at the city of Washington on the fourth Monday of November next, to answer unto George M. Davis in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, esq., chief judge of our said court, at the city of Washington, the fifth day of August, anno domini one thousand eight hundred and thirty-nine.

Issued the 16th day of September, 1839.

W. BRENT, *Clk.*

(MORFIT.)

And the aforesaid plaintiff, on the day of prosecuting and suing forth of the aforegoing writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,

Washington county, to wit:

Hugh A. Garland, late of said county, was attached to answer to George M. Davis, in a plea of trespass on the case, and so forth. And whereupon the said Davis, by H. M. Morfit, his attorney, complains, that whereas the House of Representatives of the United States had, at the first session of the 25th Congress, which was before the committing of the grievances herein complained of, passed a resolution that the clerk of said House be, among other things, directed to cause to be printed a ninth volume of the Laws of the United States, after the manner of the eighth volume thereof; and being so directed, in pursuance of such resolution the then clerk of said House, to wit, Walter S. Franklin, in the month of July of the year 1838, at the county aforesaid, had employed the said plaintiff, and, in his capacity of clerk of said House, had agreed and contracted with said plaintiff to print a ninth volume of said laws in the manner as resolved, and to deliver from his office, as clerk of the House aforesaid, a copy of said laws to said plaintiff,

to enable him to print the same, and had directed the chief clerk in the office of said clerk of the House of Representatives to prepare the said copy, and deliver the same to said plaintiff; he, the said plaintiff, in consideration thereof, had made ample arrangements, and employed the means to print the said ninth volume of said laws, and was in all respects ready and willing to print the same, after the manner as directed in said resolution, when the said Walter S. Franklin departed this life, and the said Hugh A. Garland was elected his successor as clerk of the House of Representatives aforesaid, and had charge of the laws aforesaid, from which the said ninth volume was to be printed. And the said plaintiff having the contract aforesaid, and in consideration thereof having prepared for the faithful execution of the terms thereof according to said resolution, and having, also, soon after the election of said defendant as clerk aforesaid, to wit, on or about the month of December, in the year 1838, at the county aforesaid, and before the committing of the grievances herein complained of, the said defendant was notified of said subsisting contract, and of plaintiff's readiness, and willingness, and preparation to comply with the same according to the said resolution; all of which notification of contract and preparation, as given aforesaid, the said plaintiff avers, and the said defendant was in duty bound, as clerk aforesaid, to deliver a copy of said laws to said plaintiff, in consequence, and by reason of the said resolution of Congress and the said contract of said plaintiff. And he the said plaintiff afterwards, to wit, on or about the first day of February, 1839, at the county aforesaid, asked and demanded of said defendant, who had charge of said laws from which the said ninth volume was to be printed, as clerk of the House of Representatives aforesaid, a copy of said laws under his charge, for the purpose of printing the same according to said contract, and in the manner as directed in said resolution, and without which copy from the office of said clerk the said plaintiff could not print the said laws as directed in said resolution; that the said defendant, contriving and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the profits, and emoluments, and advantages which he might and otherwise would have derived and acquired from the printing of said ninth volume of the laws of the United States, and of the profits, emoluments, and advantages of the said subsisting contract, well knowing that, without a copy of said laws from his said office, the plaintiff could not print the same as directed in said resolution; and the said defendant being in duty bound to deliver a copy of said laws, as clerk aforesaid, to said plaintiff, to comply with said resolution of Congress and with plaintiff's contract aforesaid, afterwards, to wit, on or about the 1st day of February, 1839, at the county aforesaid, and on divers other days and times between that day and the day of the issuing the writ in this behalf, did wrongfully and injuriously refuse to deliver, or furnish or permit to be delivered from said office, or furnished there-

from to said plaintiff, a copy of the laws of the United States for printing the said ninth volume of said laws as resolved in said resolution; and did also wrongfully and injuriously refuse to allow the said plaintiff to print the said ninth volume of said laws in the manner directed in said resolution, and did prevent and hinder him from printing the same. By means whereof the said George M. Davis lost the printing of said ninth volume of said laws, and the benefit of said contract; and hath been hindered and prevented from making, deriving, and having the profits, emoluments, and advantages of such printing, and of the compliance, upon his part, with the said contract, and hath also lost his time, trouble, and money, in preparations for complying with said contract; which profits, emoluments, and advantages, [he] hath been so hindered from making, and time, trouble, and money, he hath so lost in said *in said* preparations, were of great value, to wit, of the value of two thousand five hundred dollars, current money, and which profits and money he, the said plaintiff, might and would have had and received, but for the wrongful conduct of said plaintiff.

And whereas, the said George M. Davis, having a subsisting contract for printing the ninth volume of the laws of the United States, made with one Walter S. Franklin, as clerk of the House of Representatives of the United States, under a resolution of the said House, and having prepared and provided materials and employed a person, and made every necessary arrangement for commencing the same, and having during the life time of said Franklin applied for, and been promised by him the copy of said laws, which it was necessary said plaintiff should have from him as clerk of said House, where the copy was to be prepared, and where the laws for that purpose are kept; and being prevented by delay in the clerk's office of said House from receiving the said copy before the decease of the said then clerk, Walter S. Franklin, and the said Franklin having died, and the said defendant Hugh A. Garland having been chosen and elected by the said House of Representatives the clerk thereof was, afterwards, to wit, on or about the 1st day of February, in the year 1839, as clerk aforesaid, keeper, or the person having the contract of the copy of said laws, and was on the day and year last aforesaid, and before he had given a copy of said laws to any other person to print under said resolution, notified and warned of the said contract made by the said Franklin his predecessor in that office with the plaintiff, and was by said plaintiff warned and notified that he had made all the necessary preparations in consideration of such contract for printing a ninth volume of the laws of the United States, after the manner as stated in said resolution, which was passed at the first session of the twenty-fifth Congress of the United States, and was then and there, and often afterwards, required and asked by the said plaintiff to give or deliver, or to order to be given, delivered, or furnished to him a copy of the said laws from his said office as clerk of the House of Representatives afore-

said, so that the said plaintiff might go on and print the said ninth volume of the laws of the U. States, as he had contracted to print, and as he had already made preparations to print, as prescribed in the said resolution; but that the said defendant well knowing the premises, and wrongfully contriving and injuriously intending to injure the said plaintiff, and to prevent him from executing his said contract, and deprive him of any profit or emolument therefrom, did, on the said, or on or about said, 1st day of February, 1839, at the county aforesaid, and often afterwards, refuse to deliver a copy of the said laws from his office as clerk aforesaid, to said plaintiff, and did neglect and refuse to allow a copy of said laws to be furnished to said plaintiff from the office of the clerk of the said House, from which office the plaintiff says it was necessary that he should procure a copy of the same in order to print the same according to said resolution and contract, so that by such refusal, as the plaintiff alleges, he could not print a ninth volume of said laws of the U. States as was directed in the said resolution, and as he had contracted and provided the means to print; and did also, further contriving to injure said plaintiff, well knowing of said contract, and of his preparations to comply faithfully with the same, afterwards, to wit, in the month of April, 1839, at the county aforesaid, wrongfully and injuriously, and without the consent of said plaintiff, and intending to deprive him of the profits and emoluments of said printing, and the said contract, give and allow the printing of the said ninth volume of said laws, to be given to some other person or persons, and allow a copy of said laws to be furnished for such printing to such other person or persons, and thereby utterly prevent and hinder the said plaintiff from printing the same, and of having the profits, benefits and emoluments of said contract and of said printing, and which profits, benefits and emoluments he otherwise would have had, to the value of twenty-five hundred dollars, other money current of the U. States. By means of all which wrongful acts of the said defendant, the said plaintiff hath been and still is greatly *greatly* injured and damnified, and hath sustained damage to the value of five thousand dollars current money; and therefore he brings suit.

HENRY M. MORFIT,
For Plaintiff.

Affidavit.

DISTRICT OF COLUMBIA,
Washington county, to wit:

On this the seventh day of September, 1839, before the subscriber, a justice of the peace in and for said county, personally appears George M. Davis, who being duly sworn upon the Holy Evangelists deposes and says: That in pursuance of a resolution of the House of Representatives of the U. States, passed at the first session of the 25th Congress, which directed that the clerk of said House should,

among other things, cause to be printed, after the manner of the 8th volume of the laws of the United States, a ninth volume of said laws, the then clerk of said House did, to wit, between the months of March and July of the year 1838, enter into and make a verbal contract with the said deponent for the printing of the said ninth volume of said laws, according to the directions of the resolution aforesaid. That the then said clerk was Walter S. Franklin, who stipulated that the deponent, or the persons to be employed by him for and on that work, should execute it on the same type that was used for the previous volume. That the deponent was then, and still is, in possession of, and has the control of that same type, and did accordingly make preparations for complying with the terms of the resolution aforesaid, and with his contract for printing, as made with the said clerk Walter S. Franklin, for printing the ninth volume of the laws of the United States. That preparatory to such printing, all the necessary arrangements had been made, and paper purchased, amounting to upwards of three hundred dollars, by those acting for and in behalf of deponent to insure a faithful and satisfactory compliance with his, deponent's, agreement.

That after the contract was so made between the deponent and said Walter S. Franklin, as clerk aforesaid, the latter gave directions to the chief clerk in the office of said House of Representatives, to prepare the copy of said laws, and to hand it to the deponent to print according to the resolution aforesaid and in pursuance of said contract. That in the meantime the said Walter S. Franklin died, and one Hugh A. Garland was elected his successor as clerk of the House of Representatives aforesaid, and that soon after his election the deponent called upon and notified him of the existing contract between his predecessor in his official capacity as clerk aforesaid and deponent for the printing of the said ninth volume of the laws of the U. States, under the resolution aforesaid, and informed him that preparations had already been made by deponent for executing the said contract, and that deponent was ready to comply with it. That notwithstanding this, the said Hugh A. Garland refused and neglected to allow the said deponent to print the said ninth volume of the laws aforesaid, and has refused to deliver a copy of the laws aforesaid to him the deponent to print under the resolution and under his contract aforesaid; and has also prevented, and unjustly hindered, the chief clerk in the office of said clerk of the House of Representatives, from delivering to said deponent a copy of said laws, or any part thereof, to be printed under the resolution aforesaid, and under his, deponent's contract aforesaid; and, in fine, has deprived him of his contract and all the benefits thereof, which contract, and profits, and benefits, were worth to the deponent at least two thousand five hundred dollars current money. And the said deponent further says, that the unjust interference of said Hugh A. Garland, against his rights in this matter, and his withholding the laws and preventing his executing

the contract aforesaid, has caused him to lose the sum of twenty-five hundred dollars, current money, and which sum he claims as the damages sustained by him from and by reason of the wrong doings of said Garland as before stated, and which sum of money deponent verily believes he would have received and made, if the said Garland had not tortiously and unjustly interfered, and preventing the deponent from executing the work and complying with the contract. That deponent was always ready and willing, and had prepared good and competent persons, to print and finish the said ninth volume of the laws of the United States, and so notified the said Garland, and continued so ready, willing, and prepared until after the said Garland had repeatedly refused to allow him to comply with said contract, and even until he had authorized said work to be given to another, and had by that and other means put it out of the power of the deponent to have or enjoy any benefit or profits of said contract whatever. And the deponent again states, that such contract so made with him by said Franklin, was worth to him the sum of twenty-five hundred dollars, and that he has entirely lost the same by the wrongful doings of the said Garland, who has caused him damage, and damaged him to that amount.

GEO. M. DAVIS.

Subscribed and sworn before me the day and year first above written.

CLEM'T T. COOTE,
J. Peace.

November term, 1839.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, and the day of the return of the aforegoing writ, comes again into the circuit court here, the said plaintiff, by his attorney aforesaid, and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return—"Cepi."

A. HUNTER, *Marshal.*"

Defendant's appearance, rule plea and imparlance to March term, 1840.

And the said defendant being called, appears in court here by Francis S. Key, esq., his attorney; and thereupon on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle, until the fourth Monday of March next, and then to answer the declaration

aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; the same day is given to the said plaintiff also.

Non assumpsit—issue joined—venire facias to November term, 1840.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; and the said defendant, by his attorney aforesaid, as before, defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid plaintiff above against him hath complained, and of this he puts himself upon the country; and the said plaintiff, by his attorney, in like manner, and so forth: therefore let a jury thereon appear before the court here on the fourth Monday of November next, by whom, and so forth, and who neither, &c., to recognize, and so forth, because as well, and so forth; the same day is given to the aforesaid parties, then and there, and so forth.

Appearance and continuance to March term, 1841.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here, the said cause is continued until the fourth Monday of March next.

Appearance and continuance to November term, 1841.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-one, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here, the said cause is further continued until the fourth Monday of November next.

Appearance and continuance to March term, 1842.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, comes again into the circuit court here, as well the said plaintiffs by his attorney aforesaid, as the said defendant by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their

attorneys aforesaid, and by order of the court here, the said cause is further continued until the fourth Monday of March next.

Appearance.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-two, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons be drawn by ballot from the panel of petit jurors returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, thereupon, the remaining twelve persons being called, come to wit:

Jury.

1 F. S. Myer,	7 Edward Lacey,
2 C. E. Washington,	8 Sam'l Drury,
3 W. D. C. Murdock,	9 Robt. K. Nevitt,
4 Asbury Tucker,	10 Paul Stevens,
5 Joseph H. Daniels,	11 W. N. Waters,
6 Geo. W. Dashiell,	12 Geo. W. Hopkins.

Verdict—damages.

Who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant did assume upon himself in manner and form, as the aforesaid plaintiff above against him hath complained, and they assess the damages of the said plaintiff, sustained by reason of the non-performance of the promise and assumption aforesaid, to the sum of nineteen hundred dollars current money.

Motion in arrest of judgment.

Whereupon the said plaintiff, by his attorney aforesaid, prayeth judgment against the said defendant, in and upon the verdict aforesaid by the jurors aforesaid given in the form aforesaid; and the said defendant, by his attorney aforesaid, saith that the court here ought not to proceed to give judgment upon the said verdict, and prayeth that judgment against him, the said defendant, in and upon the verdict aforesaid by the jurors aforesaid given in the form aforesaid, may be stayed for the following reasons, viz:

Reasons.

1. Because there is no cause of action stated in the first count of the plaintiff's declaration.
2. Ditto, as to the second count.
3. Because there is a general verdict, and one count is bad.

F. S. KEY, *for deft.*

Continuance—curia advisare vult to Nov. term, 1842—motion in arrest overruled, and judgment on verdict for the plaintiff, damages and costs.

And because the court here is not yet advised of giving their judgment of and upon the premises, therefore day thereof is given, as well to the said plaintiff as to the said defendant, until the fourth Monday of November next to hear their judgment of and upon the premises, for that the court here is not yet advised thereof. At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, come the parties aforesaid, by their attorneys aforesaid; upon which the record and matters aforesaid having been seen, and by the court here fully understood, and all and singular the premises having been examined, and mature deliberation being had thereupon, for that it seems to the court here that the verdict aforesaid is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new trial ought to be had of the issue aforesaid; therefore, it is considered by the court here that the said plaintiff recover against the said defendant, as well the sum of nineteen hundred dollars current money, his damages aforesaid by the jury aforesaid in form aforesaid assessed, to be sustained by occasion of the non-performance of the promise and assumption aforesaid, as the sum of forty-six dollars and thirty cents by the court here unto him the said plaintiff on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said defendant in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said defendant, by his attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defendant's 1st bill of exceptions.—Defendant's 1st exception.

GEO. M. DAVIS
vs.
HUGH A. GARLAND.

In the trial of this cause, the plaintiff having offered the resolution of Congress of 14th October, 1837, proved that in July, 1838, a verbal contract was made between the plaintiff and Walter Franklin, then clerk of the House of Representatives of the United States, for the printing of the 9th volume of the laws of Congress, in which it was agreed that the plaintiff should do the printing thereof on the same terms as had been previously agreed with plaintiff's father who had died some short time before, and had been paid to said plaintiff's father for the 8th volume of the laws of the United States, and was to be paid for the same at the usual Congress prices—the printing to be executed under the superintendence and direction of Samuel Burche, chief clerk of said House of Representatives; that no minute or entry of said agreement was made in writing among the books and

papers of said Franklin's office; that it is usual and customary for the contracts made on the authority of the House to be made verbally, and the same have always been received by the House and paid for; and that the said plaintiff frequently, after the making of the said agreement, called on said Burche for the work, stating his readiness to proceed with the work, and did not receive the same, because the said Burche had not prepared the laws for publication.

And then further proved, that the said Walter Franklin died in September, 1838, and the defendant was elected clerk of the House on the first Monday of December, 1838; that some time afterwards, in December, 1839, the said Burche, not having yet prepared the said laws for said publication, and the said plaintiff waiting as before for the same, the said Garland was informed about the 1st January, 1839, of the contract so as aforesaid verbally made between the said Franklin and the plaintiff, and observed that he had understood such a resolution was passed, and that such a work was to be given out for printing, and that he considered that as the agreement was a verbal one it was not binding, and that he had the right to give the contract to whom he pleased; that afterwards, in about two months from the beginning of December, 1838, he was again called upon and informed of the said contract, verbally made with the plaintiff by the said Franklin, when he said he had made an agreement or a contract with one Langtree; and that the said Garland did make such agreement with said Langtree, and ordered the work not to be given to the said plaintiff, but to be given to said Langtree to be printed, which was done accordingly, and the plaintiff thereby prevented from doing the work.

And further proved, that said plaintiff had made considerable preparations for the work, and had engaged Mr. Gideon to do the printing of the work, and had transferred to said Gideon his office and press valued at $1,000, to be paid for by the profits of the work—of all which the defendant was informed before he made the contract with Langtree; and that plaintiff suffered considerable loss by the taking away said contract; and that said Gideon, in the prosecution of his preparations for said work, had expended 6 or $700 for paper for that very work.

And further, that at the time of making said verbal contract with said Franklin, the plaintiff asked him if it was necessary it should be reduced to writing, and was answered that it was not necessary, and was not usual; and also proved that there was no written contract in the office of the clerk for the printing of the 8th volume of the laws of the United States. And that said Franklin knew and assented to the plaintiff's engaging said Gideon to do the said printing at the time of said contract; and that the defendant was advised by the clerks, before he made the contract with said Langtree, to be cautious and not get into difficulties by giving the work to another. And that no written contract with said Langtree, nor any memorandum thereof, appears in the office of said clerk.

And upon the evidence aforesaid of the said plaintiff, the defendant, by his counsel, prayed the court to instruct the jury, that if the same was believed by the jury to be true, the plaintiff was not entitled to recover, which the court refused—to which refusal defendant excepts, and prays the court to sign and seal this bill of exceptions, which is done this 14th day of April, 1842.

W. CRANCH, [SEAL.]
B. THRUSTON, [SEAL.]
JAS. S. MORSELL, [SEAL.]

Defendant's 2d bill of exceptions.—Defendant's 2d bill of exceptions.

DAVIS, vs. GARLAND.

And thereupon the defendant, on the said evidence, prayed the court to instruct the jury as follows:

If the jury believe from the evidence that the defendant, in making the subsequent contract with Langtree, and causing the compilation to be delivered to him to be printed, acted officially and bona fide, and not with corrupt motives, and verily believed that the prior contract made verbally with the plaintiff was not obligatory, then he is not liable to damages in this action upon the evidence aforesaid; which also the court refused to give—to which refusal defendant excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly, this 14th day of April, 1842.

W. CRANCH, [SEAL.]
B. THRUSTON, [SEAL.]
JAS. S. MORSELL, [SEAL.]

Test: WM. BRENT, *Clerk.*

Appeal to Supreme Court—Clerk's certificate.

And whereas, afterwards, to wit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and forty-three, the said defendant, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name [L. S.] and affixed the seal of the said circuit court, this 11th day of September, 1843.

W. BRENT, *Clerk.*

Filed 1st December, 1843.